

Message Text

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ORIGIN EA-10

INFO OCT-01 ISO-00 EB-07 FEA-01 AGR-05 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05 L-02 LAB-04

NSAE-00 NSC-05 PA-01 RSC-01 AID-05 CIEP-01 SS-15

STR-01 TAR-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01

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DRAFTED BY EB/IFD/OIA:TRBRODERICK:EA/PHL:RTWILLNER:SPB

APPROVED BY EA/PHL:EHULEN

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INR/DFR/REC:RKATES (INFO)

TREASURY:RGODDMAN (INFO)

TREASURY:WCMCFADDEN (INFO)

STR:SLANDE (INFO)

COMMERCE:DARRILL (INFO)

EA/EP:AGEBER

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA

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E.O. 11652: N/A

TAGS: EINV, ETRD

SUBJECT: ELIGIBILITY FOR GENERALIZED PREFERENCES

REF: (A) STATE 282968, (B) STATE 282967

1. TRADE ACT OF 1974, SEC 502 (B) 4, (REF A), PROHIBITS
THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY
COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF U.S. CITI-
ZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIA-
TIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S.

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CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) 6 APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U.S. CITIZENS IN SUCH CASES.

2. UNLIKE THE HICKENLOOPER AMENDMENT (SEC 620 E OF THE FOREIGN ASSISTANCE ACT), TRADE ACT REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING ALL UNRESOLVED DISPUTES UNDER SECTION 502 B 4. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES

INVOLVING U.S. PROPERTY.

3. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED, THE INTERNATIONAL TRADE COMMISSION (ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC EFFECT OF PREFERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS OF THOSE ARTICLES PROPOSED FOR SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. WE HOPE ITC WILL UNDERTAKE ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND WILL BEGIN ITS WORK AS SOON AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6) WHILE THE ITC STUDY IS IN PROGRESS. HOWEVER, IT IS POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC WILL BEGIN ITS PRODUCT ANALYSIS.

4. ACCORDINGLY, EMBASSY IS REQUESTED TO INFORM THE DEPARTMENT ASAP OF THE STATUS OF ANY OUTSTANDING CASES WHICH MIGHT AFFECT PHILIPPINE ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6). THE STARTING POINT FOR EVALUATION SHOULD BE THE TEXT OF THE LEGISLATION ITSELF. UNTIL DEFINITIVE LEGAL ANALYSIS OF 502 (B) (4) IS COMPLETED, LIMITED OFFICIAL USE

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POSTS SHOULD ASSUME IT APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMERCIAL) OF U.S. CITIZENS, WITHOUT REGARD TO VALUE. AS A "RULE OF REASON", DEPARTMENT IS LIMITING THE EVALUATION TO CASES ARISING IN THE POST-WAR ERA, I.E., SINCE JANUARY 1, 1946, OR THE DATE OF INDEPENDENCE OF A COUNTRY, WHICHEVER IS LATER.

5. SINCE SOME ACTIONS (SUCH AS COERCED PARTICIPATION, SEVERE CURTAILMENT OF MANAGEMENT PREROGATIVES, OR FORCED CANCELLATION OR RENEGOTIATION OF CONTRACTS) MAY BE EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER, EMBASSY SHOULD REPORT ALL KNOWN UNRESOLVED DISPUTES BETWEEN U.S. CITIZENS OR CORPORATIONS AND GOP, WHICH INVOLVE LOSS OF PROPERTY, TO ENABLE DEPARTMENT TO EXERCISE JUDGMENT IN DETERMINING WHETHER "NATIONALIZATION" HAS OCCURRED WITHIN THE MEANING OF 502 (B) (4). INFORMATION SHOULD ALSO BE INCLUDED TO PERMIT DETERMINATION, INTER ALIA, WHETHER THE CRITERIA OF 502 (B) (4) (D) REGARDING COMPENSATION ARE BEING MET, AND WHETHER "GOOD FAITH" IS PRESENT UNDER 502 (B) (6).

6. WOULD ALSO APPRECIATE EMBASSY COMMENTS REGARDING WHAT STEPS USG MIGHT APPROPRIATELY TAKE TO BRING THESE PROVISIONS TO THE ATTENTION OF HOST GOVERNMENT OFFICIALS, AND TO ENCOURAGE RESOLUTION OF ANY OUTSTANDING DISPUTES. KISSINGER

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*** Current Classification *** LIMITED OFFICIAL USE

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